

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives notice that on May 24, 2013, the Board issued an order in Docket No. RMU-2012-0002, In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), “Order Adopting Amendment to 199 IAC 15.5(2) and Giving Notice of Proposed Amendments to 199 IAC 25.4.” Notice of Intended Action was published in IAB Vol. XXXV, No. 10 (11/14/12), p. 860, as **ARC 0455C**. The Board is adopting the amendment to 199 IAC 15.5(2) that corrects an error to a citation in the subrule.

Item 2 in the Notice of Intended Action included proposed rules that asserted Board jurisdiction over the rates, terms, and conditions of pole attachments on poles owned by electric and telecommunications utilities. The proposed rules related to pole attachments were designed to comply with the Federal Communications Commission (FCC) regulations at 47 CFR § 1.1401 et seq., so that the Board could certify that it had asserted jurisdiction over the pole attachments of communications entities on the poles owned by electric and telecommunications utilities. Based upon comments from participants in the rule making, the Board has determined that adoption of the proposed rules will not be the most efficient approach to accomplish the goal of establishing procedures and time frames to ensure the safety of pole attachments.

Initial written comments were filed by CTIA-The Wireless Association® (CTIA), Cox Iowa Telecom, LLC (Cox), the Iowa Association of Electric Cooperatives (IAEC), Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners (collectively, Sprint), Frontier Communications of Iowa, LLC (Frontier), Qwest Corporation d/b/a CenturyLink QC (CenturyLink), the Iowa Utility Association (IUA), and Mediacom Communications Corporation (Mediacom).

The Board held an oral presentation to allow for comments regarding the proposed rules and to allow the Board to ask questions of the participants. The Board allowed participants to file additional written comments after the oral presentation. Additional comments were filed by IUA, Frontier, the Consumer Advocate Division of the Department of Justice, CenturyLink, CTIA, Cox, and Mediacom.

After consideration of the comments, the Board has determined that it will not adopt the proposed rules concerning pole attachments but will instead publish a new Notice that proposes amendments to 199 IAC 25.4(476,478) limited to establishing notice, corrective action, and complaint procedures related to pole attachments that violate the Iowa Electrical Safety Code (see **ARC 0784C** herein). The Board’s decision and a discussion of the new proposed amendments to 199 IAC 25.4(476,478) can be found in the “Order Adopting Amendment to 199 IAC 15.5(2) and Giving Notice of Proposed Amendments to 199 IAC 25.4,” which is accessible through the Board’s electronic filing system (EFS) at the EFS Web site at <http://efs.iowa.gov>.

The amendment adopted in this rule making will have no impact on jobs.

This amendment is intended to implement Iowa Code sections 17A.4 and 476.2.

This amendment will become effective July 17, 2013.

The following amendment is adopted.

Amend subrule 15.5(2) as follows:

15.5(2) Relationship to avoided costs. For purposes of this subrule, “new capacity” means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

A rate for purchases satisfies the requirements of this rule if the rate equals the avoided costs determined after consideration of the factors set forth in ~~rule 15.6(476)~~ subrule 15.5(6); except that a rate for purchases other than from new capacity may be less than the avoided cost if the board determines that a lower rate is consistent with subrule 15.5(1) and is sufficient to encourage cogeneration and small power production.

Unless the qualifying facility and the utility agree otherwise, rates for purchases shall conform to the requirements of this rule regardless of whether the electric utility making purchases is simultaneously making sales to the qualifying facility.

In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for purchases do not violate this rule if the rates for the purchases differ from avoided costs at the time of delivery.

[Filed 5/20/13, effective 7/17/13]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/12/13.